

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JUN 13 2008

JOHN F. CORCORAN, CLERK
BY: 
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UNITED STATES OF AMERICA,)	Criminal Action No. 7:98-cr-00026-2
)	
v.)	<u>2255 MEMORANDUM OPINION</u>
)	
DENNIS A. MCCARTHY.)	By: Samuel G. Wilson
)	United States District Judge

Petitioner, Dennis A. McCarthy, a federal inmate proceeding pro se, filed a motion to re-open and revise his case, in which he alleges that his sentence was improper. Inasmuch as McCarthy is challenging the validity of his federal conviction and sentence, the court construes the motion as a motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Upon review of the record, the court concludes that the § 2255 action must be dismissed as successive.

I.

McCarthy challenges his 121-month sentence for conspiring to distribute marijuana, in violation of 21 U.S.C. § 846, and possessing with the intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1). Court records indicate that McCarthy has previously filed two § 2255 motions, see Civil Action Nos. 7:00-cv-00073 (W.D. Va. Apr. 25, 2001) and 7:06-cv-00059 (W.D. Va. Jan. 23, 2006) (dismissed as successive), regarding the same conviction and/or sentence. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As McCarthy has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.¹

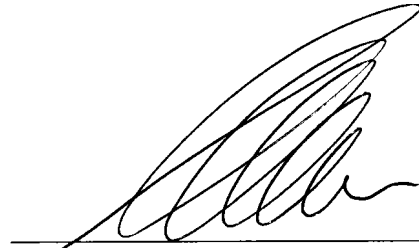
¹ Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of
(continued...)

II.

For the reasons stated, the court denies McCarthy's motion and dismisses it as a successive § 2255 petition.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all parties.

ENTER: This 13th day of June, 2008.



United States District Judge

¹(...continued)
the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.